

## CONSOLIDATIONS AND MERGERS OF DOMESTIC TELEGRAPH CARRIERS

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FEBRUARY 18, 1943.—Ordered to be printed

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Mr. BULWINKLE, from the committee of conference, submitted the following

### CONFERENCE REPORT

[To accompany S. 158]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 158) to amend the Communications Act of 1934, as amended, to permit consolidations and mergers of domestic telegraph carriers, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following: *That the Communications Act of 1934, as amended, is amended by adding at the end of Title II the following new section:*

#### *"CONSOLIDATIONS AND MERGERS OF TELEGRAPH CARRIERS*

*"SEC. 222. (a) As used in this section—*

*"(1) The term 'consolidation or merger' includes the legal consolidation or merger of two or more corporations, and the acquisition by a corporation through purchase, lease, or in any other manner, of the whole or any part of the property, securities, facilities, services, or business of any other corporation or corporations, or of the control thereof, in exchange for its own securities, or otherwise.*

*"(2) The term 'domestic telegraph carrier' means any common carrier by wire or radio, the major portion of whose traffic and revenues is derived from domestic telegraph operations; and such term includes a corporation owning or controlling any such common carrier.*

*"(3) The term 'international telegraph carrier' means any common carrier by wire or radio, the major portion of whose traffic and revenues*

is derived from international telegraph operations; and such term includes a corporation owning or controlling any such common carrier.

"(4) The term 'consolidated or merged carrier' means any carrier by wire or radio which acquires or operates the properties and facilities unified and integrated by consolidation or merger.

"(5) The term 'domestic telegraph operations' includes acceptance, transmission, reception, and delivery of record communications by wire or radio which either originate or terminate at points within the continental United States, Alaska, Canada, Saint Pierre-Miquelon, Mexico, or Newfoundland and terminate or originate at points within the continental United States, Alaska, Canada, Saint Pierre-Miquelon, Mexico, or Newfoundland, and includes acceptance, transmission, reception, or delivery performed within the continental United States between points of origin within and points of exit from, and between points of entry into and points of destination within, the continental United States with respect to record communications by wire or radio which either originate or terminate outside the continental United States, Alaska, Canada, Saint Pierre-Miquelon, Mexico, and Newfoundland, and also includes the transmission within the continental United States of messages which both originate and terminate outside but transit through the continental United States: Provided, That nothing in this section shall prevent international telegraph carriers from accepting and delivering international telegraph messages in the cities which constitute gateways approved by the Commission as points of entrance into or exit from the continental United States, under regulations prescribed by the Commission, and the incidental transmission or reception of the same over its own or leased lines or circuits within the continental United States.

"(6) The term 'international telegraph operations' includes acceptance, transmission, reception, and delivery of record communications by wire or radio which either originate or terminate at points outside the continental United States, Alaska, Canada, Saint Pierre-Miquelon, Mexico, and Newfoundland, but does not include acceptance, transmission, reception, and delivery performed within the continental United States between points of origin within and points of exit from, and between points of entry into, and points of destination within, the continental United States with respect to such communications, or the transmission within the continental United States of messages which both originate and terminate outside but transit through the continental United States.

"(7) The terms 'domestic telegraph properties' and 'domestic telegraph facilities' mean properties and facilities, respectively, used or to be used in domestic telegraph operations.

"(8) The term 'employee' or 'employees' (i) shall include any individual who is absent from active service because of furlough, illness, or leave of absence, except that there shall be no obligation upon the consolidated or merged carrier to reemploy any employee who is absent because of furlough, except in accordance with the terms of his furlough, and (ii) shall not include any employee of any carrier which is a party to a consolidation or merger pursuant to this section to the extent that he is employed in any business which such carrier continues to operate independently of the consolidation or merger.

"(9) The term 'representative' includes any individual or labor organization.

"(10) The term 'continental United States' means the several States and the District of Columbia.

"(b) (1) *It shall be lawful, upon application to and approval by the Commission as hereinafter provided, for any two or more domestic telegraph carriers to effect a consolidation or merger; and for any domestic telegraph carrier, as a part of any such consolidation or merger or thereafter, to acquire all or any part of the domestic telegraph properties, domestic telegraph facilities, or domestic telegraph operations of any carrier which is not primarily a telegraph carrier: Provided, That, except as provided in paragraph (2) of this subsection, no domestic telegraph carrier shall effect a consolidation or merger with any international telegraph carrier, and no international telegraph carrier shall effect a consolidation or merger with any domestic telegraph carrier.*

"(2) *As a part of any such consolidation or merger, or thereafter upon application to and approval by the Commission as hereinafter provided, the consolidated or merged carrier may acquire all or any part of the domestic telegraph properties, domestic telegraph facilities, or domestic telegraph operations of any international telegraph carrier.*

"(c) (1) *Whenever any consolidation or merger is proposed under subsection (b) of this section, the telegraph carrier or telegraph carriers seeking authority therefor shall submit an application to the Commission, and thereupon the Commission shall order a public hearing to be held with respect to such application and shall give reasonable notice thereof, in writing, and an opportunity to be heard, to the Governor of each of the States in which any of the physical property involved in such proposed consolidation or merger is situated, to the Secretary of State, the Secretary of War, the Attorney General of the United States, the Secretary of the Navy, representatives of employees where represented by bargaining representatives known to the Commission, and to such other persons as the Commission may deem advisable. If, after such public hearing, the Commission finds that the proposed consolidation or merger, or an amended proposal for consolidation or merger, (1) is authorized by subsection (a) of this section, (2) conforms to all other applicable provisions of this section, (3) is in the public interest, the Commission shall enter an order approving and authorizing such consolidation or merger, and thereupon any law or laws making consolidations and mergers unlawful shall not apply to the proposed consolidation or merger. In finding whether any proposed consolidation or merger is in the public interest, the Commission shall give due consideration, among other things, to the financial soundness of the carrier resulting from such consolidation or merger.*

"(2) *Any proposed consolidation or merger of domestic telegraph carriers shall provide for the divestment of the international telegraph operations theretofore carried on by any party to the consolidation or merger, within a reasonable time to be fixed by the Commission, after the consideration for the property to be divested is found by the Commission to be commensurate with its value, and as soon as the legal obligations, if any, of the carrier to be so divested will permit. The Commission shall require at the time of the approval of such consolidation or merger that any such party exercise due diligence in bringing about such divestment as promptly as it reasonably can.*

"(d) *No proposed consolidation or merger of telegraph carriers pursuant to this section shall be approved by the Commission if, as a result of such consolidation or merger, more than one-fifth of the capital stock of any carrier which is subject to the jurisdiction of the Commission will be*

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owned or controlled, or voted, directly or indirectly, (1) by any alien or the representative of any alien, (2) by any foreign government or the representative thereof, (3) by any corporation organized under the laws of any foreign government, or (4) by any corporation of which any officer or director is an alien, or of which more than one-fifth of the capital stock is owned or controlled, or voted, directly or indirectly, by any alien or the representative of any alien, by any foreign government or the representative thereof, or by any corporation organized under the laws of a foreign government.

"(e) (1) In the case of any consolidation or merger of telegraph carriers pursuant to this section, the consolidated or merged carrier shall, except as provided in paragraph (2) of this subsection, distribute among the international telegraph carriers, telegraph traffic by wire or radio destined to points without the continental United States, and divide the charges for such traffic, in accordance with such just, reasonable, and equitable formula in the public interest as the interested carriers shall agree upon and the Commission shall approve: Provided, however, That in case the interested carriers should fail to agree upon a formula which the Commission approves as above provided, the Commission, after due notice and hearing, shall prescribe in its order approving and authorizing the proposed consolidation or merger a formula which it finds will be just, reasonable, equitable, and in the public interest, will be, so far as is consistent with the public interest, in accordance with the existing contractual rights of the carriers, and will effectuate the purposes of this subsection.

"(2) In the case of any consolidation or merger pursuant to this section of telegraph carriers which, immediately prior to such consolidation or merger, interchanged traffic with telegraph carriers in a contiguous foreign country, the consolidated or merged carrier shall distribute among such foreign telegraph carriers, telegraph traffic by wire or radio destined to points in such contiguous foreign country and shall divide the charges therefor, in accordance with such just, reasonable, and equitable formula in the public interest as the interested carriers shall agree upon and the Commission shall approve: Provided, however, That in case the interested carriers should fail to agree upon a formula which the Commission approves as above provided, the Commission, after due notice and hearing, shall prescribe in its order approving and authorizing the proposed consolidation or merger a formula which it finds will be just, reasonable, equitable, and in the public interest, will be, so far as is consistent with the public interest, in accordance with the existing contractual rights of the carriers, and will effectuate the purposes of this subsection. As used in this paragraph, the term 'contiguous foreign country' means Canada, Mexico, or Newfoundland.

"(3) Whenever, upon a complaint or upon its own initiative, and after a full hearing, the Commission finds that any such distribution of telegraph traffic among telegraph carriers, or any such division of charges for such traffic, which is being made or which is proposed to be made, is or will be unjust, unreasonable, or inequitable, or not in the public interest, the Commission shall by order prescribe the distribution of such telegraph traffic, or the division of charges therefor, which will be just, reasonable, equitable, and in the public interest, and will be, so far as is consistent with the public interest, in accordance with the existing contractual rights of the carriers.

"(4) For the purposes of this subsection, the international telegraph operations of any domestic telegraph carrier shall be considered to be the

operations of an independent international telegraph carrier, and the domestic telegraph operations of any international telegraph carrier shall be considered to be the operations of an independent domestic telegraph carrier.

"(f) (1) Each employee of any carrier which is a party to a consolidation or merger pursuant to this section who was employed by such carrier immediately preceding the approval of such consolidation or merger, and whose period of employment began on or before March 1, 1941, shall be employed by the carrier resulting from such consolidation or merger for a period of not less than four years from the date of the approval of such consolidation or merger, and during such period no such employee shall, without his consent, have his compensation reduced or be assigned to work which is inconsistent with his past training and experience in the telegraph industry.

"(2) If any employee of any carrier which is a party to any such consolidation or merger, who was employed by such carrier immediately preceding the approval of such consolidation or merger, and whose period of employment began after March 1, 1941, is discharged as a consequence of such consolidation or merger by the carrier resulting therefrom, within four years from the date of approval of the consolidation or merger, such carrier shall pay such employee at the time he is discharged severance pay in cash equal to the amount of salary or compensation he would have received during the full four-week period immediately preceding such discharge at the rate of compensation or salary payable to him during such period, multiplied by the number of years he has been continuously employed immediately preceding such discharge by one or another of such carriers who were parties to such consolidation or merger, but in no case shall any such employee receive less severance pay than the amount of salary or compensation he would have received at such rate if he were employed during such full four-week period: Provided, however, That such severance pay shall not be required to be paid to any employee who is discharged after the expiration of a period, following the date of approval of the consolidation or merger, equal to the aggregate period during which such employee was in the employ, prior to such date of approval, of one or more of the carriers which are parties to the consolidation or merger.

"(3) For a period of four years after the date of approval of any such consolidation or merger, any employee of any carrier which is a party to such consolidation or merger who was such an employee on such date of approval, and who is discharged as a result of such consolidation or merger, shall have a preferential hiring and employment status for any position for which he is qualified by training and experience over any person who has not theretofore been an employee of any such carrier.

"(4) If any employee is transferred from one community to another, as a result of any such consolidation or merger, the carrier resulting therefrom shall pay, in addition to such employee's regular compensation as an employee of such carrier, the actual traveling expenses of such employee and his family, including the cost of packing, crating, drayage, and transportation of household goods and personal effects.

"(5) In the case of any consolidation or merger pursuant to this section, the consolidated or merged carrier shall accord to every employee or former employee, or representative or beneficiary of an employee or former employee, of any carrier which is a party to such consolidation or merger, the same pension, health, disability, or death insurance benefits, as were provided for prior to the date of approval of the consolidation or

merger, under any agreement or plan of any carrier which is a party to the consolidation or merger which covered the greatest number of the employees affected by the consolidation or merger; except that in any case in which, prior to the date of approval of the consolidation or merger, an individual has exercised his right of retirement, or any right to health, disability, or death insurance benefits has accrued, under any agreement or plan of any carrier which is a party to the consolidation or merger, pension, health, disability, or death insurance benefits, as the case may be, shall be accorded in conformity with the agreement or plan under which such individual exercised such right of retirement or under which such right to benefits accrued. For purposes of determining and according the rights and benefits specified in this paragraph, any period spent in the employ of the carrier of which such individual was an employee at the time of the consolidation or merger shall be considered to have been spent in the employ of the consolidated or merged carrier. The application for approval of any consolidation or merger under this section shall contain a guaranty by the proposed consolidated carrier that there will be no impairment of any of the rights or benefits specified in this paragraph.

"(6) Any employee who, since August 27, 1940, has left a position, other than a temporary position, in the employ of any carrier which is a party to any such consolidation or merger, for the purpose of entering the military or naval forces of the United States, shall be considered to have been in the employ of such carrier during the time he is a member of such forces, and, upon making an application for employment with the consolidated or merged carrier within forty days from the time he is relieved from service in any of such forces under honorable conditions, such former employee shall be employed by the consolidated or merged carrier and entitled to the benefits to which he would have been entitled if he had been employed by one of such carriers during all of such period of service with such forces; except that this paragraph shall not require the consolidated or merged carrier, in the case of any such individual, to pay compensation, or to accord health, disability, or death insurance benefits, for the period during which he was a member of such forces. If any such former employee is disabled and because of such disability is no longer qualified to perform the duties of his former position but otherwise meets the requirements for employment, he shall be given such available employment at an appropriate rate of compensation as he is able to perform and to which his service credit shall entitle him.

"(7) No employee of any carrier which is a party to any such consolidation or merger shall, without his consent, have his compensation reduced, or (except as provided in paragraph (2) and paragraph (8) of this subsection) be discharged or furloughed during the four-year period after the date of the approval of such consolidation or merger. No such employee shall, without his consent, have his compensation reduced, or be discharged or furloughed, in contemplation of such consolidation and merger, during the six-month period immediately preceding such approval.

"(8) Nothing contained in this subsection shall be construed to prevent the discharge of any employee for insubordination, incompetency, or any other similar cause.

"(9) All employees of any carrier resulting from any such consolidation or merger, with respect to their hours of employment, shall retain the rights provided by any collective bargaining agreement in force and effect upon the date of approval of such consolidation or merger until such agreement is terminated, executed, or superseded. Notwithstanding

any other provision of this Act, any agreement not prohibited by law pertaining to the protection of employees may hereafter be entered into by such consolidated or merged carrier and the duly authorized representative or representatives of its employees selected according to existing law.

"(10) For purposes of enforcement or protection of rights, privileges, and immunities granted or guaranteed under this subsection, the employees of any such consolidated or merged carrier shall be entitled to the same remedies as are provided by the National Labor Relations Act in the case of employees covered by that Act; and the National Labor Relations Board and the courts of the United States (including the courts of the District of Columbia) shall have jurisdiction and power to enforce and protect such rights, privileges, and immunities in the same manner as in the case of enforcement of the provisions of the National Labor Relations Act.

"(11) Nothing contained in this subsection shall apply to any employee of any carrier which is a party to any such consolidation or merger whose compensation is at the rate of more than \$5,000 per annum.

"(12) Notwithstanding the provisions of paragraphs (1) and (7), the protection afforded therein for the period of four years from the date of approval of the consolidation or merger shall not, in the case of any particular employee, continue for a longer period, following such date of approval, than the aggregate period during which such employee was in the employ, prior to such date of approval, of one or more of the carriers which are parties to the consolidation or merger. As used in paragraphs (1), (2), and (7), the term 'compensation' shall not include compensation attributable to overtime not guaranteed by collective bargaining agreements."

SEC. 2. Section 214 (a) of the Communications Act of 1934, as amended, is hereby amended to read as follows:

"SEC. 214. (a) No carrier shall undertake the construction of a new line or of an extension of any line, or shall acquire or operate any line, or extension thereof, or shall engage in transmission over or by means of such additional or extended line, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require or will require the construction, or operation, or construction and operation, of such additional or extended line: Provided, That no such certificate shall be required under this section for the construction, acquisition, or operation of (1) a line within a single State unless such line constitutes part of an interstate line, (2) local, branch, or terminal lines not exceeding ten miles in length, or (3) any line acquired under section 221 or 222 of this Act: Provided further, That the Commission may, upon appropriate request being made, authorize temporary or emergency service, or the supplementing of existing facilities, without regard to the provisions of this section. No carrier shall discontinue, reduce, or impair service to a community, or part of a community, unless and until there shall first have been obtained from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby; except that the Commission may, upon appropriate request being made, authorize temporary or emergency discontinuance, reduction, or impairment of service, or partial discontinuance, reduction, or impairment of service, without regard to the provisions of this section. As used in this section the term 'line' means any channel of communication established by the use of appropriate equipment, other than a channel of communication established by the

interconnection of two or more existing channels: Provided, however, That nothing in this section shall be construed to require a certificate or other authorization from the Commission for any installation, replacement, or other changes in plant, operation, or equipment, other than new construction, which will not impair the adequacy or quality of service provided."

SEC. 3. Section 214 (b) of the Communications Act of 1934, as amended, is hereby amended to read as follows:

"(b) Upon receipt of an application for any such certificate, the Commission shall cause notice thereof to be given to, and shall cause a copy of such application to be filed with, the Secretary of War, the Secretary of the Navy, and the Governor of each State in which such line is proposed to be constructed, extended, acquired, or operated, or in which such discontinuance, reduction, or impairment of service is proposed, with the right to those notified to be heard; and the Commission may require such published notice as it shall determine."

SEC. 4. Section 214 (c) of the Communications Act of 1934, as amended, is hereby amended to read as follows:

"(c) The Commission shall have power to issue such certificate as applied for, or to refuse to issue it, or to issue it for a portion or portions of a line, or extension thereof, or discontinuance, reduction, or impairment of service, described in the application, or for the partial exercise only of such right or privilege, and may attach to the issuance of the certificate such terms and conditions as in its judgment the public convenience and necessity may require. After issuance of such certificate, and not before, the carrier may, without securing approval other than such certificate, comply with the terms and conditions contained in or attached to the issuance of such certificate and proceed with the construction, extension, acquisition, operation, or discontinuance, reduction, or impairment of service covered thereby. Any construction, extension, acquisition, operation, discontinuance, reduction, or impairment of service contrary to the provisions of this section may be enjoined by any court of competent jurisdiction at the suit of the United States, the Commission, the State commission, any State affected, or any party in interest."

SEC. 5. Section 214 (d) of the Communications Act of 1934, as amended, is hereby amended to read as follows:

"(d) The Commission may, after full opportunity for hearing, in a proceeding upon complaint or upon its own initiative without complaint, authorize or require by order any carrier, party to such proceeding, to provide itself with adequate facilities for the expeditious and efficient performance of its service as a common carrier and to extend its line or to establish a public office; but no such authorization or order shall be made unless the Commission finds, as to such provision of facilities, as to such establishment of public offices, or as to such extension, that it is reasonably required in the interest of public convenience and necessity, or as to such extension or facilities that the expense involved therein will not impair the ability of the carrier to perform its duty to the public. Any carrier which refuses or neglects to comply with any order of the Commission made in pursuance of this paragraph shall forfeit to the United States \$100 for each day during which such refusal or neglect continues."

SEC. 6. Section 5266 of the Revised Statutes, as amended (U. S. C., 1940 edition, title 47, sec. 3), is amended to read as follows:



"SEC. 5266. Telegrams between the several departments of the Government and their officers, relating exclusively to the public business, in their transmission over the lines of any telegraph company to which has been given the right-of-way, timber, or station lands from the public domain, shall have priority over all other business at such rates as the Federal Communications Commission shall annually fix. No part of any appropriation for the several departments of the Government shall be paid to any company which neglects or refuses to transmit such telegrams in accordance with the provisions of this section: Provided, That nothing in this section shall limit the authority of the Federal Communications Commission, under section 201 (b) of the Communications Act of 1934, as amended, with respect to the classification of communications and the prescribing of different charges for different classes of communications, and such authority of the Federal Communications Commission to fix rates for Government communications may be exercised with respect to any or all communications to which section 201 (b) of the Communications Act of 1934, as amended, and this section apply: Provided further, That the term 'Government' as used in section 201 (b) of the Communications Act of 1934, as amended, and the term 'departments of the Government' as used in this section, shall be held to refer only to the established departments, independent establishments, and agencies in the legislative, executive and judicial branches of the Federal Government."

And the House agree to the same.

A. L. BULWINKLE,  
 LYLE H. BOREN,  
 LINDLEY BECKWORTH,  
 CHAS. A. WOLVERTON,  
 CLARENCE J. BROWN,

*Managers on the part of the House.*

ERNEST W. McFARLAND,  
 LISTER HILL,  
 JAMES M. TUNNELL,  
 WALLACE H. WHITE, JR.,  
 WARREN R. AUSTIN,

*Managers on the part of the Senate.*

## STATEMENT OF THE MANAGERS ON THE PART OF THE HOUSE

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 158) to amend the Communications Act of 1934, as amended, to permit consolidations and mergers of domestic telegraph carriers, and for other purposes, submit the following statement in explanation of the effect of the action agreed upon by the conferees and recommended in the accompanying conference report:

The House amendment struck out all of the Senate bill after the enacting clause. The committee of conference recommends that the Senate recede from its disagreement to the amendment of the House, with an amendment which is a substitute for both the Senate bill and the House amendment, and that the House agree to the same.

The differences between the House amendment and the proposed conference substitute are noted in the following statement, except for incidental changes made necessary by reason of agreements reached, and minor clarifying changes:

### PROVISIONS OF THE PROPOSED NEW SECTION 222 OF THE COMMUNICATIONS ACT OF 1934

#### DEFINITION OF "DOMESTIC TELEGRAPH OPERATIONS"

In the definition of the term "domestic telegraph operations", contained in the proposed section 222 (a) (5) in the conference substitute, there is included a proviso as follows:

*Provided*, That nothing in this section shall prevent international telegraph carriers from accepting and delivering international telegraph messages in the cities which constitute gateways approved by the Commission as points of entrance into or exit from the continental United States and, under regulations prescribed by the Commission, the incidental transmission or reception of the same over its own or leased lines or circuits within the continental United States.

This proviso is the same as the one contained in the definition in the Senate bill, except that the words "under regulations prescribed by the Commission" have been inserted. It was felt desirable to include this proviso, in order clearly to permit carriers to continue the operations referred to, because of the requirement (in subsection (c) (2)) that in case of a consolidation or merger of domestic telegraph companies the plan of consolidation or merger shall provide for the divestment of the international telegraph operations theretofore carried on by any party to the consolidation or merger.

#### COMMISSION APPROVAL OF CONSOLIDATION OR MERGER

Subsection (c) follows the House provision with respect to Commission approval in the case of a proposed consolidation or merger, except that (1) notice of the public hearing thereon is required to be given not only to those persons specified in the House substitute but also to the Attorney General of the United States and to representatives of employees where represented by bargaining representatives

known to the Commission, and (2) the conference substitute does not give the Commission authority, as did the House substitute, to make its approval "subject to such terms and conditions, and such modifications, as it shall find to be just and reasonable". There is included, however, a provision from the Senate bill giving the Commission authority to approve an amended proposal for consolidation or merger.

#### DIVESTMENT OF INTERNATIONAL OPERATIONS

Paragraph (2) of subsection (c) is a provision taken from the Senate bill, and no similar provision was contained in the House bill. It provides that any proposed consolidation or merger of domestic telegraph carriers shall provide for the divestment of the international telegraph operations theretofore carried on by any party to the consolidation or merger, within a reasonable time to be fixed by the Commission, after the consideration for the property to be divested is found by the Commission to be commensurate with its value, and as soon as the legal obligations, if any, of the carrier to be so divested will permit. The Commission must require at the time of the approval of such consolidation or merger that any such party exercise due diligence in bringing about such divestment as promptly as it reasonably can.

Consideration was given to the inclusion of such a provision while the bill was under consideration by the House committee. It was felt that such divestment would be desirable in the public interest, but in view of certain existing long-term contracts it was felt impracticable to require such action to be taken at this time. However, it is believed that the provision included in the conference substitute will provide for the divestment of such operations without working undue hardship on the companies involved.

#### DISTRIBUTION OF TRAFFIC AMONG INTERNATIONAL AND FOREIGN TELEGRAPH CARRIERS

The Senate bill and the House substitute contained substantially similar provisions which provided, in case of a consolidation or merger of domestic telegraph companies, for the working out of a formula with respect to the distribution, by the consolidated carrier, of traffic among international telegraph carriers, and a formula with respect to the distribution of traffic among foreign telegraph carriers in a contiguous foreign country. The House provisions are included in the conference substitute, in subsection (e) (1) and (2). It will be noted that in each of these provisions it is required that in case it is necessary for the Commission to prescribe a formula, by reason of failure of the carriers to work out a formula which the Commission approves, the Commission's formula is required to be one which will be, so far as is consistent with the public interest, in accordance with the existing contractual rights of the carriers. This will require the Commission, in each case, to give due regard to the contracts under which the carriers were operating, and had rights, prior to the consolidation or merger.

#### PROVISIONS FOR PROTECTION OF EMPLOYEES

For the purpose of protecting the employees who would be affected by a consolidation or merger of domestic telegraph companies, the House amendment provided that the Commission should require a

fair and equitable arrangement to protect the interests of such employees, and required that the Commission include terms and conditions providing that during the period of 4 years from the date of approval such consolidation or merger should "not result in such employees being in a worse position with respect to their compensation or character of employment". It was provided, however, that in the case of any particular employee such protection need not continue for a longer period than that during which the employee was, prior to the approval date, in the employment of one or more of the carriers involved.

In lieu of this provision the conference substitute contains three paragraphs, subsection (a) (1), (2), and (7). These paragraphs are based upon provisions of the Senate bill but contain modifications.

Paragraph (1) provides that each employee who entered the employ of any of the companies involved, on or before March 1, 1941, shall continue to be employed by the consolidated or merged carrier for not less than four years from the approval date, and provides that during such period no such employee shall, without his consent, have his compensation reduced or be assigned to work which is inconsistent with his past training and experience in the telegraph industry.

Paragraph (2) requires that severance pay shall be paid in the case of any employee who entered employment after March 1, 1941, and who is discharged as a consequence of the consolidation or merger and within 4 years of the date of approval thereof. Such severance pay is to be equal to the amount of salary or compensation the employee would have received during the full 4-week period immediately preceding his discharge, at the rate of compensation or salary payable to him during such period, multiplied by the number of years he has been continuously employed immediately preceding such discharge by one or another of the carriers, but in no case is the employee to receive less severance pay than the amount of salary or compensation he would have received at such rate if he had been employed during such full 4-week period. This paragraph contains a proviso, however, that such severance pay shall not be required to be paid to any employee who is discharged after the expiration of a period, following the date of approval of the consolidation or merger, equal to the aggregate period during which such employee was in the employ, prior to such date of approval, of one or more of the carriers which are parties to the consolidation or merger.

The first sentence of paragraph (7) provides that no employee of any carrier which is a party to a consolidation or merger shall, without his consent, have his compensation reduced, or (except as provided in paragraph (2) or paragraph (8)) be discharged or furloughed during the 4-year period after the date of the approval of the consolidation or merger. Paragraph (7) also provides that no such employee shall, without his consent, have his compensation reduced, or be discharged or furloughed, in contemplation of consolidation or merger, during the 6-month period immediately preceding such approval.

A new paragraph (12), which is based on a provision which was contained in subsection (f) (1) of the House amendment, is included in subsection (f) of the conference substitute. This paragraph provides that notwithstanding the 4-year protection provided for in paragraphs (1) and (7), such protection shall be required to be

afforded, in the case of any particular employee, only for a period following the approval of the consolidation or merger equal to the aggregate period during which such employee was employed by one or more of the carriers prior to the approval date. The effect of paragraphs (1), (7), and (12), taken together, is that no employee will be granted protection thereunder for more than 4 years and, in the case of employees who worked for one or more of the companies for an aggregate period of less than 4 years prior to the approval date, the protection would be afforded for such time, less than 4 years, as would correspond to his total period of employment prior to the approval date.

It will be noted that under paragraphs (1) and (7) the compensation of an employee may be reduced with his consent. It is contemplated that authorized collective bargaining agents will have the power to give such consent to reductions in compensation on behalf of employees.

The protection provided in paragraph (1) and in the first sentence of paragraph (7), against reduction of an employee's compensation without his consent, is a protection against reduction of such compensation below the compensation the employee was being paid at the time of or immediately prior to the approval of the consolidation or merger. If an employee's compensation is increased after the approval of the consolidation or merger, these provisions will not require that the employee's consent be obtained before reducing his compensation if such reduction does not result in his compensation being below what it was at the time of or immediately prior to the approval of the consolidation or merger.

Paragraph (12) also includes a definition of the term "compensation," taken from the House amendment, which will be applicable to that term as used in paragraphs (1), (2), and (7).

Paragraph (4) of the House amendment related to the duty of the consolidated or merged carrier to accord pension, health, disability, or death insurance benefits to employees, former employees or former employees of any carrier which is a party to a consolidation or merger. In the House amendment the words "pension rights" were used. In the conference substitute (par. (5)) the word "rights" has been omitted. The words "under comparable conditions", which were in the House paragraph, have also been omitted. It is not believed that these omissions make any substantive change in the meaning of the provision. It was felt that their retention was unnecessary and would have given rise to difficulties of interpretation.

#### SUBSECTION (G) OF THE HOUSE AMENDMENT

Subsection (g) of the proposed new section 222, in the House amendment, read as follows:

(g) The authority conferred by this section shall be exclusive and plenary, and any carrier participating in or resulting from any transaction approved by the Commission under this section shall have full power to carry such transaction into effect without securing approval otherwise than as specified in this section.

This subsection has been omitted from the conference substitute. In view of its broadness and its general terms, the conference committee was not entirely clear as to its full scope and effect. It was felt that it might, for example, limit the jurisdiction of the Securities and Exchange Commission under one or more of the several Acts which it administers, and that such an effect would have been undesirable.

## 14 CONSOLIDATE AND MERGE DOMESTIC TELEGRAPH CARRIERS

### AMENDMENTS TO SECTION 214 OF THE COMMUNICATIONS ACT OF 1934

Both the Senate bill and House amendment rewrote Section 214 (a), (b), and (c) of the Communications Act of 1934, as amended.

In section 214 (a) as contained in the House amendment, the following provision appeared:

No carrier shall discontinue service to a community, or part of a community, unless and until there shall first have been obtained from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby; except that the Commission may, upon appropriate request being made, authorize temporary or emergency discontinuance of service, or partial discontinuance of service, without regard to the provisions of this section.

The conference substitute retains this provision except that, after the words "No carrier shall discontinue", a comma and the words "reduce, or impair" have been inserted, and necessary amendments have been made to conform to this change.

The amended section 214 (a) of the Communications Act of 1934, as amended, as included in the conference substitute, contains the proviso which was in the House amendment, eliminating the requirement of a certificate of public convenience and necessity in certain cases in order to avoid imposing on the carriers the necessity for making a burdensome number of applications. The cases in which the requirement is eliminated are those where no new construction is involved (as, for example, the providing of additional circuits by installing carrier or phantom equipment, or the making of other installations, changes, or replacements in plant or equipment), subject, however, to the restriction that a certificate will have to be obtained if the action proposed to be taken by the carrier would impair the adequacy or quality of service provided.

### RATES FOR GOVERNMENT TELEGRAMS

Section 6 of the Senate bill amended section 5266 of the Revised Statutes, which was derived from the Post Roads Act of July 24, 1866, as amended, so as to (1) eliminate that part of such section which gives the Federal Communications Commission authority to fix rates for Government telegrams, and (2) provide that no telegraph company should, by reason of any benefit received, under the Post Roads Act of July 24, 1866, be required to transmit Government telegrams at rates less than those applicable to other telegrams in the same classes.

In the House amendment, as reported to the House by the Committee on Interstate and Foreign Commerce, this section of the Senate bill was not changed. The House, however, amended it by striking out the sentence which provided that no telegraph company should by reason of any benefit received under the Post Roads Act of July 24, 1866, be required to transmit such telegrams at rates less than those applicable to other telegrams in these same classes. Since the amendment made by the House did not, however, restore the language of such section 5266 giving the Communications Commission the authority to prescribe rates for Government telegrams, it is doubtful whether the amendment would have had the effect of requiring the

continuance of reduced rates for Government telegrams under such section 5266, although this was clearly the purpose of the amendment.

Section 6 of the conference substitute accomplishes the purpose of the House by amending section 5266 so as to retain therein the language authorizing the Communications Commission to prescribe rates for Government telegrams and, in addition, provides that nothing in the section shall limit the authority of the Commission, under section 201 (b) of the Communications Act of 1934, to classify communications and to prescribe different charges of different classes of communications, and provides that such authority of the Commission may be exercised with respect to any or all communications to which section 201 (b) applies and to which section 5266 of the Revised Statutes applies. Under such section 201 (b) the Commission may classify "Government" communications as such, and prescribe rates therefor.

The conference committee was informed that the word "agents" now contained in section 5266 has been interpreted so that cost-plus-a-fixed-fee contractors, having contracts with the Government, are permitted to send telegrams at the reduced Government rate. It was felt that this practice should not continue, and section 5266 has therefore been amended by striking out the words "and agents" and by including a definition of "departments of the Government" and "Government", which will be applicable for purposes of section 5266 and section 201 (b) of the Communications Act of 1934, in order to carry out the purpose of denying to such contractors the privilege of sending telegrams at the reduced rates applicable in the case of official Government telegrams.

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